

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,
RESPONDENT

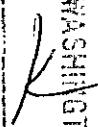
v. - - - - - CAUSE NO. # 48324-6-II

Marcus Anthony REED
PETITIONER
APPELLANT

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF WASHINGTON FOR PIERCE COUNTY

The Honorable Michael E. Schwartz, Judge

STATEMENT OF ADDITIONAL GROUNDS
TO BE ADDED TO BRIEF OF APPELLANT

FILED
COURT OF APPEALS
DIVISION II
2016 OCT -6 AM 10:50
STATE OF WASHINGTON
BY 
DEPUTY

STATEMENT OF ADDITIONAL GROUNDS

Issue #1

I believe that my conviction for Murder in the first degree should be overturned, reversed, and/or remanded to the crime of Murder in the Second degree because a Murder in the first degree was never committed; if anything I should have been on trial for murder in the second degree.

Issue #1 Argument

I was found guilty of being an accomplice to a Murder in the first degree, acting as an accomplice to my co-defendant Daniel Davis;

Who was found guilty of being the shooter (Primary Actor) in the case; and who was found guilty only of a Murder in the Second degree.

He believed his actions in the incident was appropriate for a Murder two conviction and so did the State.

So how can I be held accountable for being an accomplice to his actions and yet be found guilty of a Murder in the first degree when a murder in the first degree was never committed.

FACTS RELATED TO ISSUE #1:

- Daniel Davis pled guilty to Murder and accepted Murder in the second degree.
- He was the State's Star Witness
- Facts in Evidence established that:
 - He was in a fight with the victim before the victim was shot.
 - He was sliced with the blade of a box cutter ~~but~~ which was in the hand of the victim before and after he was shot.
 - Daniel was cut before the victim was shot.
 - Through WITNESS TESTIMONY, VIDEO EVIDENCE AND MEDICAL EXAMINER EVIDENCE, IT WAS ESTABLISHED THAT DANIEL DAVIS WAS THE SHOTTER.
- His admission to guilty acts in his testimony in the incident is what the state used to accuse me of being an accomplice to.

STATEMENT OF ADDITIONAL GROUNDS

Issue #2 AND ARGUMENT:

I believe that my conviction should be overturned because I was denied my constitutional 6th (sixth) Amendment Right to effective assistance of counsel; through which I was denied both confidence and confidentiality in any conversations I attempted to have, had and/or needed to have with my attorney at any time during trial at the defense table.

Because the victim's mother could hear every word I was saying through her extremely sensitive listening/hearing device along with her very frequent disruptions in trial and her very frequent private conversations with the prosecutor following the disruptions throughout the duration of the whole trial.

"Effective representation of counsel cannot be held without privacy. An attorney cannot →

→ make a full and complete investigation of both the facts and law unless he/she has the full and complete confidence of his/her client, and such confidence cannot exist if the client cannot have the assurance that his disclosures to his counsel are strictly confidential." St. J. Corey 62 Wn. 2d. 371, 382 P.2d 1019 (1963) / Wash. Const. Art. 1 § 3 / Constr. Amend's I, VI and Art. 18 22.

- I was denied this. The court made the issue clear and attempted to compromise with the right for the victim's mother to use the listening device and the constitutional right to effective counsel; it became evident that there was no way to completely solve the problem when Judge made his recommendations; And then I became fully deprived when the prosecutor would continuously take breaks in trial to go and have private conversations with the victim's mother subsequently every time she disrupted trial by dropping her device in the gallery.

I asked what was going on and the response

Was that he was harmlessly making sure that she was okay. I fully believe that after being informed the sensitivity of the device that she could fully hear any and all of what I was feeling and asking my attorney and in turn shared it with the prosecutor during their many private conversation.

Their actions and in coordinates with the presence of that very sensitive listening device were very intimidating and deprived me of all confidence in conversation with my attorney in trial.

FACTS RELATED TO ISSUE #2

- Ineffective assistance of counsel due to eavesdropping with a sensitive listening device
- Device was present, but the court was unaware until the afternoon on the third day of trial.
- Mrs. Philly (Victim's Mother) did not make the court aware when she gave testimony.
- She often dropped her device in the gallery during trial and subsequently the prosecutor would stop the trial for a break and have private talks with her.

- The prosecutor explained only on the first private conversation that he was just making sure she was okay. But every after that never explained any reason.
- Mrs. Philly had inappropriate contact with a Juror (#10) that caused the Juror to be immediately excused from the case.
- The specific device that the victim's Mother used has been known to pick up conversations that a person normally is unable to hear:
 - Specifically when my attorney put on the record her claims that she cannot be fully effective considering how sensitive the listening device is known to be; "I HAVE COME TO LEARN THAT JURORS ARE ABLE TO PICK UP CONVERSATIONS FROM THE JURY ROOM WITH THE DOOR CLOSED, CONVERSATIONS THAT WERE OCCURRING IN THE COURTROOM.... I BELIEVE THAT NOT BEING ABLE TO ~~FREELY~~ COMMUNICATE FREELY WITH MY CLIENT BECAUSE I'M CONCERNED ABOUT THE VICTIM'S MOTHER OVERTHEARING OUR CONVERSATIONS,... INTERFERES WITH MY ABILITY TO ASSIST MY CLIENT." (sunni ko) Defense Attorney
- Though Judge Schwartz made the court aware and even moved the microphone a few feet closer to the witness stand, still made it clear that it still didn't "solve the problem" and stated that in his defense practices in the past that he was ~~ever~~ "always concerned that the device could inhibit communications with his clients" - (Judge Schwartz)

STATEMENT OF ADDITIONAL GROUNDS

ISSUES / ADDITIONS TO BE ADDED TO APPEAL

As Part of somethings I feel like my attorney left out that I would like to add are the following:

- 1.) First, I would like to join in and/or adopt my co-appellant Damien Davis' argument #1 "THE TRIAL COURT ABUSED ITS DISCRETION BY ADMITTING EVIDENCE AS A PRIOR CONSISTENT STATEMENT BASED ON ITS ERRONEOUS VIEW OF THE LAW" (Pages 42-50 - in co-Appellants Brief); Pursuant to RAP 10.1 (g).
- 2.) I would like to add to the first argument in my Appeal #1, "THE REDACTION OF DAVIS'S STATEMENT WAS INSUFFICIENT TO PROTECT REED'S RIGHT OF CONFRONTATION, AND THE COURT SHOULD HAVE GRANTED REED'S MOTION FOR SEVERANCE". (Pages 15-21)
 - I do believe that my conviction should be overturned and remanded for a new trial because of this; the Judge and prosecution really abused their discretion by denying my motion to severance multiple times, knowingly

that it would prejudice my defense by using my co-defendant's (Non-testifying) statement against me during trial and deliberations; causing the Jury to use inadmissible evidence against, briefly.

It was completely obvious even with the redactions that the person who Davis's statement was incriminating was me. I can only see that the state either denied me a severance to save money or cheat the law to gain the conviction.

Either way its wrong and here are a few case laws I would like to add to my appeal:

• ESLAMINIA V. WHITE, 134 F.3d 1234 (9th Cir.)

"Jury exposure to facts not in evidence deprives defendant of rights to confrontation, cross-examination and ~~effect~~ assistance of counsel embodied in 6th Amendment."

• STATE V. FISHER No. 91438-9 (July 7th, 2016) LEXIS 818

"Whatever the nature of the redaction, the key question is whether the redaction clearly refers to the named co-defendant."

"THANK YOU FOR YOUR TIME AND CONSIDERATION, THE FOREGOING IS ALL TRUE AND CORRECT UNDER THE LAWS OF WASHINGTON TO THE BEST OF MY KNOWLEDGE."

TIME: 11:45... DATE: 10-4-16

RESPECTFULLY SUBMITTED,
x MARCUS REED x 

DECLARATION OF SERVICE BY MAIL

GR 3.1

I, Marcus Anthony Reed, declare that, on
this 4th day of OCTOBER, 2016 I deposited the forgoing document

STATEMENT OF ADDITIONAL GUILLOUDS BY

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or a copy thereof, in the internal legal mail system of

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And made arrangements for postage, addressed to: (name & address of court or other party.)
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950 Broadway, Suite 300

TACOMA, WA 98402-4454

I declare under penalty of perjury under the laws of the State of Washington that the
forgoing is true and correct

Dated at Clallam Bay, WA on 10.4.16
(City & State.) (Date)


Signature

Marcus A. Reed
Type/Print Name